

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

IN THE MATTER OF:

and

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) Charge No: 2007CC3328
) EEOC: N/A
) ALS No: 08-162
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This matter is before me on *Respondent's Motion for Summary Decision*, filed on September 21, 2009. Complainant did not respond to the Motion; nonetheless, Respondent filed a reply on October 26, 2009.

CONTENTIONS OF THE PARTIES

Respondent contends this matter should be dismissed as the undisputed facts show that Complainant was not subjected to discrimination when Respondent denied his loan request. Complainant's position is not known, as Complainant filed no response to this motion.

The following facts were derived from uncontested facts in the record and were not the result of credibility determinations. All evidence was viewed in the light most favorable to Complainant:

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2. Respondent is a bank that provides personal and commercial banking services.
3. Respondent filed a verified answer to the Complaint on May 9, 2008.
4. On July 23 2008, both parties appeared through counsel and a discovery schedule was issued.
5. On July 29, 2009, Complainant's motion to substitute his attorney was granted and a summary decision briefing schedule was entered. Motions for summary decision were ordered to be filed no later than September 21, 2009, and responses were ordered due by October 12, 2009.
6. Complainant did not file a response to Respondent's motion for summary decision nor did he file a request for an extension.
7. Complainant submitted an application to Respondent for a construction loan in the amount of \$1,424,000.00 around June 17, 2006, for the purpose of renovating a seven unit condominium building.
8. Margaret Amato, Respondent's Associate Managing Director, reviewed Complainant's application and determined that Complainant did not meet Respondent's initial threshold for a construction loan in that Complainant failed to properly complete the loan application. Specifically, Complainant failed to provide tax returns for the previous two years, a verification of assets, a pro forma profitability analysis or a source/use of funds statement. Further, the only proposed collateral was the subject property, which was mortgaged, abandoned and unfinished. Despite this determination, Amato and a colleague, James Wagner, the lead lender in Respondent's real estate group, met with Complainant around July 6, 2006; however, Complainant was still unable to provide the further information to support his application.
9. Amato and Wagner determined that Complainant did not qualify for the loan because he lacked an established earning record, his proposed collateral was insufficient and he had

insufficient liquidity. On September 1, 2006, Amato denied Complainant's loan application by sending a letter to Complainant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties in this action.
2. The Commission will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot put forth reasons to deny the motion, the motion will be granted. *Jones and Burlington Northern Railroad. IHRC, ALS No. 1704, June 23, 1986.*

DETERMINATION

Complainant has failed to respond to the motion or to otherwise refute the factual assertions in the motion, and the legal arguments presented by Respondent in the motion appear to be well pled. Thus, the Complaint and Charge in this matter should be dismissed with prejudice.

DISCUSSION

The Complaint alleges that Respondent discriminated against Complainant on the bases of race, age, gender, physical handicap, and military status when it denied him a real estate rehabilitation loan around September 1, 2006.

In its motion, Respondent refutes these allegations by submitting the affidavit of Margaret Amato, Respondent's Associate Managing Director. Amato avers that she reviewed Complainant's application and determined that Complainant did not meet Respondent's initial threshold for a construction loan in that Complainant failed to properly complete the loan application. Specifically, Complainant failed to provide tax returns for the previous two years, a verification of assets, a pro forma profitability analysis or a source/use of funds statement. Further, the only proposed collateral was the subject property, which was mortgaged, abandoned and unfinished. Despite this determination, Amato and a colleague, James Wagner, the lead lender in Respondent's real estate group, met with Complainant around July 6, 2006;

however, Complainant was still unable to provide the further information to support his application.

Based on his application, Amato avers that she and Wagner determined that Complainant did not qualify for the loan because he lacked an established earning record, his proposed collateral was insufficient and he had insufficient liquidity. On September 1, 2006, Amato denied Complainant's loan application by letter.

Complainant fails to refute any of Respondent's sworn assertions. These assertions and arguments as presented by Respondent appear valid on their face and, pursuant to the Commission approach in *Jones and Burlington Northern Railroad, IHRC, ALS No. 1704, June 23, 1986*, it is not necessary to search the record further to refute them. I would note, however, that there is, in fact, no competent evidence in the record to support the allegations made in the complaint.

This matter is being considered pursuant to Respondent's motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist 1993). A motion for summary decision is to be granted when the pleadings, depositions, exhibits and affidavits on file reveal that no genuine issue of material fact exists and establish that the moving party is entitled to judgment as a matter of law. See, Section 5/8-106.1 of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*, and *Young v. Lemons*, 266 Ill. App. 3d 49, 51, 639 N.E.2d 610 (1st Dist 1994).

Although Complainant is not required to prove his case to defeat the motion, he is required to present some factual basis that would arguably entitle him to a judgment under the law. *Birck v. City of Quincy*, 241 Ill. App. 3d 119, 608 N.E.2d 920 (4th Dist 1993) citing, *inter alia*, *West v. Deere & Co.*, 145 Ill. 2d 177, 182, 582 N.E.2d 685, 687 (1991). As Complainant failed to do so, Respondent is entitled to summary decision on all claims.

RECOMMENDATION

Accordingly, I recommended that the Complaint and Charge in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

December 21, 2009

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section